

**MICHAEL J. NOLL**  
Claimant

**LINCOLN GRAIN, INC.**  
Respondent

**NATIONAL UNION FIRE INSURANCE COMPANY**  
Insurance Carrier

"(1) The finding that respondent is required to pay \$1,718.75 in attorney's fees to claimant's counsel when the only issue covered by the Award was claimant's request for reimbursement for prescription expenses when the time represented by the fees involve issues not covered by the Award.

"(2) If the fees are allowed, the finding that the only issues at the hearing was reimbursement to claimant for prescriptions and the claimed attorney's fee when other issues presented at the hearing, with the parties stipulating that the disputed surgery and related temporary

disability compensation will be paid to claimant the surgery is performed.

- "(3) The finding that \$1,718.75 is a reasonable fee.
- "(4) The implied finding that respondent must pay claimant's counsel's fees and that the fees should not be paid, as provided for in K.S.A. 44-5361g [sic], from the temporary disability sought at the hearing."

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented, the Appeals Board (Board) finds the Award of the Administrative Law Judge should be affirmed.

The original Award in this matter was entered April 23, 1997. At that time, claimant was granted future medical upon proper application. It had been contemplated at that time by both claimant's treating physician, Thomas Lynn Shriwise, M.D., and claimant's expert witness, Edward J. Prostic, M.D., that claimant would possibly one day require a subtalar arthrodesis, although it is acknowledged Dr. Prostic was more positive of that eventual necessity than was Dr. Shriwise. Claimant's request for the post award medical treatment was at first met with resistance by respondent. Respondent did ultimately concede and by September 2001 had agreed to the surgery under the hands of Susan K. Bonar, M.D., of Rockhill Orthopaedics, P.C.

Prior to this time and unbeknownst both to respondent and claimant's attorney, claimant was obtaining treatment from his personal physician, Dr. William J. Arkell. Claimant paid for \$664.36 in prescription medication ordered from Dr. Arkell, even though claimant was being provided medical care through respondent's authorized doctor. At the time of the August 9, 2001 hearing, claimant presented those prescription medication receipts, requesting that he be reimbursed for the cost. The Administrative Law Judge denied claimant's request to authorize those prescription medications, finding that claimant should not be rewarded for his "utter disregard of the proper procedures for obtaining future medical benefits."

The Board, in reviewing the evidence, finds that claimant did, indeed, disregard the appropriate procedures for obtaining future medical benefits and the Administrative Law Judge's finding that claimant should not be rewarded for same is affirmed.

Claimant's attorney was also awarded attorney fees for 13.75 hours of time at \$125 per hour totaling \$1,718.75. Respondent objects, arguing that, as claimant will be ultimately receiving temporary total disability compensation, claimant's attorney's share should come from that, pursuant to K.S.A. 1990 Supp. 44-536. However, claimant's entitlement to temporary total disability compensation was not at issue at the time of this hearing. Additionally, the Administrative Law Judge accurately noted that the dispute appeared to

be due to the less than conciliatory attitudes of the attorneys, rather than anything on claimant's part. K.S.A. 1990 Supp. 44-536, in regulating attorney fees under the Workers Compensation Act, was not enacted to benefit attorneys. Rather, this statute and others dealing with attorney fees were enacted to enable claimants to obtain competent counsel. In addition, they are part of a statutory scheme intended primarily to benefit injured workers by securing the prompt payment of the benefits provided by the Workers Compensation Act. Hatfield v. Wal-Mart Stores, Inc., 14 Kan. App. 2d 193, 786 P.2d 618 (1990).

The Board finds the order of the Administrative Law Judge requiring respondent to pay claimant's counsel \$1,718.75 representing 13.75 hours of labor at \$125 per hour is appropriate and should be affirmed.

Claimant's attorney's request that he be paid an additional 5 hours representing the time spent preparing for the action to the Board at \$150 per hour is denied. K.S.A. 1990 Supp. 44-536(h) requires that any such dispute regarding attorney fees "shall be heard and determined by the director, after reasonable notice to all interested parties and attorneys." That matter should, therefore, first be presented to the Administrative Law Judge for determination.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bryce D. Benedict dated December 21, 2001, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 2002.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: John J. Bryan, Attorney for Claimant  
Jeffrey D. Slattery, Attorney for Respondent  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director